



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,712	11/12/2003	Brendan J. McCarthy	8101-03140	9476

7590 06/29/2005

BRINKLEY, MCNERNEY, MORGAN,
SOLOMON & TATUM, LLP
KEVIN P. CROSBY, ESQ.
200 E. LAS OLAS BLVD
FORT LAUDERDALE, FL 33301

EXAMINER

BROWN, PETER R

ART UNIT

PAPER NUMBER

3636

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/706,712	Applicant(s) MCCARTHY ET AL.	
	Examiner Peter R. Brown	Art Unit 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4,6-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Damsch in view of Smith et al.

Damsch (figs. 1,2) shows structure similar to that claimed, including a connector 4 between the first and second mattresses to limit the lateral and vertical movement thereof when in a stacked relationship. While Damsch does not show a tube interconnected between the mattresses, the patent to Smith et al (figs. 1-4) teaches the use of an arcuate external tube 24 that extends between various inflatable interconnected components of a seating support to equalize pressure between the components. In view of this suggestion, to have provided the first and second mattresses of Damsch with a connecting fluid tube, to thereby equalize the pressure between them, would have been obvious to one with ordinary skill in the art. Whether the tubes are connected to sidewalls of the mattresses is considered a matter of design choice, as is the "plane" of the sidewalls, the type of connector utilized between the mattresses, and the type of fluid within the mattresses.

The assembly and use of the above structure would appear to encompass the method steps as set forth.

Claims 5 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Damsch and Smith et al as applied to the claims above, and further in view of Kojic et al.

To have provided the back cushion of Damsch with integral armrests, for additional comfort, would have been an obvious modification in view of the suggestion of Kojic et al (fig. 1).

Applicant's arguments filed April 15, 2005 have been fully considered but they are not persuasive.

As set forth in the above rejection, the newly cited patent to Smith et al clearly suggests the use of arcuate tubes extending between first and second inflatable "mattresses" of a support, to allow for co-inflation of both mattresses, yet permitting relative folding movement therebetween. The limitations directed to the attachment of the tubes to the sidewalls, and the sidewalls of the mattresses lying in a plane, are considered matters of design choice, as the planes of the sidewalls depend on the shape of the mattresses, and the connection of the tubes to either the front, top, bottom or sides of the mattresses is not considered a patentable distinction, as one of skill in the art could readily secure the tubes to any such corresponding surfaces, and yet maintain the flexibility and relative movement between the mattresses.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter R. Brown whose telephone number is 571-272-6853. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Application/Control Number: 10/706,712

Page 5

Art Unit: 3636

Should you have questions on access to the Private PAIR system, contact the
Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Peter R. Brown
Primary Examiner
Art Unit 3636

prb